

# Third Party Liability



## A STATE'S OPPORTUNITY

REPORTS

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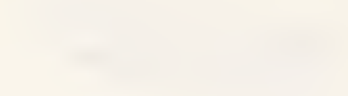
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# THIRD PARTY LIABILITY

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## A STATE'S OPPORTUNITY

Contacts:  
Jeanette Keenan BAC  
Althea Arnold BAC



# THIRD PART (continued)

OPTIONAL  
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## **I. INTRODUCTION**

- This document has been prepared for State officials who make decisions about resource investments in Medicaid.
- It is intended to serve as an overview for strategies which can save public dollars by improving the design and implementation of Medicaid third party liability (TPL) programs.
- In a period of tight State budgets, it is particularly important that State decisionmakers be aware of the effect of resource allocation decisions on savings paybacks.
- The national median payback from operating a TPL program is \$21 for every dollar invested.

## **II. WHAT IS THIRD PARTY LIABILITY?**

- Third parties are entities or individuals who are legally responsible for paying the medical claims of Medicaid recipients before Medicaid pays these claims.
- Third parties (sources of health care and liability coverage) include:
  - + private health insurance,
  - + employment-related health insurance,
  - + medical support from absent parents,
  - + automobile insurance (including no-fault insurance),
  - + court judgments or settlements from a liability insurer,

- + State workers' compensation,
  - + first party probate-estate recoveries, and
  - + other Federal programs.
- Medicaid pays only after the above sources have met their legal obligation to pay; i.e., Medicaid is payer of last resort.
  - Every Medicaid jurisdiction is required by Federal law to pursue the legal liability of third party payers.
    - + Applicants and recipients are required by law, as a condition of eligibility, to authorize the State to pursue and make recovery from liable third parties on their behalf.
    - + Applicants and recipients are required by law to provide information about any health care coverage they may have available to them.
  - The two methods States use to handle claims involving TPL are cost avoidance and postpayment recovery.
    - + Cost avoidance is avoiding payment of Medicaid claims when insurance is available. The provider of services is required to bill and collect from liable third parties before sending the claim to Medicaid.
    - + Postpayment recovery, or "pay and chase," occurs when Medicaid pays the recipient's medical bills and then attempts to recover from liable third parties. This usually happens when Medicaid is not aware of the other insurance until after a claim is paid.

### III. WHY SHOULD TPL BE IMPORTANT TO YOU?

- According to the National Conference of State Legislatures' State legislative report, January 1988, "budget problems and tax policy will top State fiscal agendas in 1988." In most States, Medicaid is one of the three largest and most expensive programs.
- TPL is an important health care cost containment measure.
- Third party savings can help put money back into State coffers.
  - + In some States, monies recovered from third party collections are returned to the general revenue fund.
  - + In other States, monies recovered from third party collections are returned to the Medicaid program.
- Aggressive pursuit of TPL can reduce the taxpayers' burden; TPL shifts the payment of medical services to the legally liable private sector.
- Pursuit of TPL is not detrimental to the recipient.
  - + Savings can be generated without terminating eligibility.
  - + Recipients are not denied access to quality health care.

### IV. WHAT KIND OF SAVINGS CAN BE EXPECTED FROM TPL?

#### Currently Misspent Dollars

- The United States General Accounting Office reported in 1985 to the Congress that Medicaid pays between \$500 million and \$1 billion annually which should have been paid by other insurers.

- This misspending is equivalent to approximately 2—3 percent of fiscal year 1985 Medicaid expenditures.

#### Benefit/Cost Analysis

- The median rate of TPL savings to administrative costs is 21:1. The savings rewards are much greater than the investment.
- Forty-six States reported a median 1.87 percent savings in program dollars through TPL pursuit.
- This is just the tip of the iceberg.

#### Medicaid Recipients with Other Health Insurance

- Sources of income and health care data for 1986 strongly indicate that approximately 20 percent of the Medicaid population (23 million) in 1986 had a third party resource available to them.<sup>1/</sup>
- States recently reported that 6 percent of all Medicaid recipients in 1986 had a third party resource which was known by the State Medicaid agencies.<sup>2/</sup>
- Based on available income and health care data, the following chart illustrates that there could be up to 14 percent of the Medicaid population with TPL unknown to State Medicaid agencies.

### V. IF TPL IS SO GREAT, WHY AREN'T STATES DOING MORE?

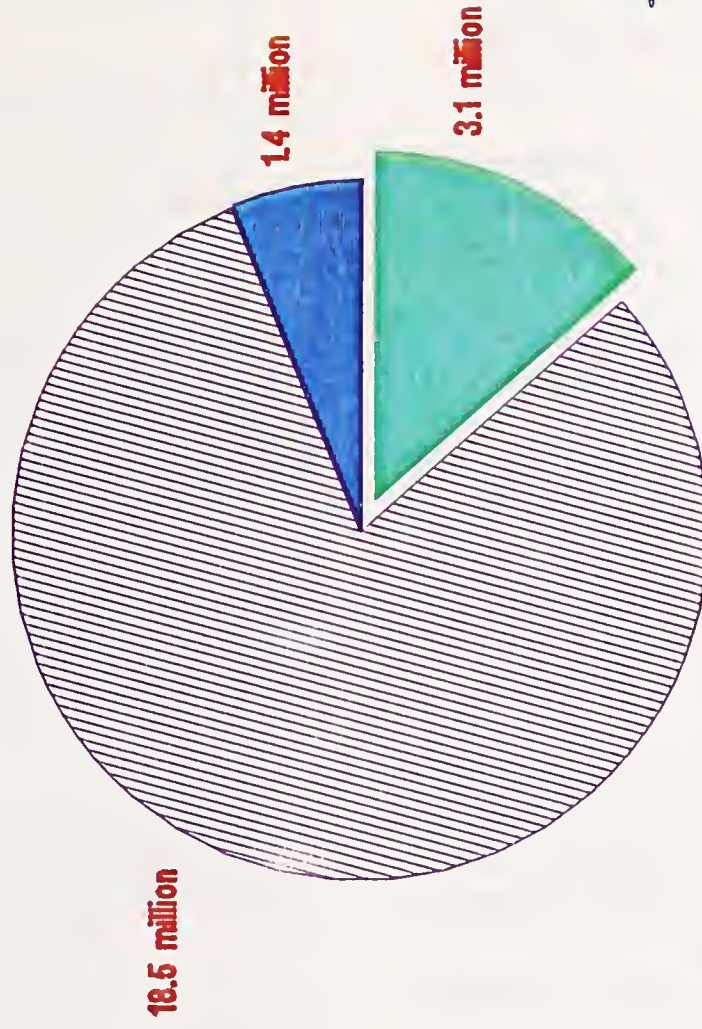
- Many States have become more aggressive in their pursuit of TPL since 1983.
- However, State Medicaid agencies continue to identify obstacles they perceive as hampering their efforts to improve program effectiveness.

<sup>1/</sup> Employee Benefit Research Institute Tabulations of the March 1986 Current Population Survey.

<sup>2/</sup> Medicaid State Agency TPL Inventory Report; Health Care Financing Administration, Bureau of Quality Control, 1986.

# MEDICAID RECIPIENTS WITH OTHER HEALTH INSURANCE

1986



## LEGEND

KNOWN TPL 6.1%

NO TPL 80.4%

POTENTIALLY UNTAPPED TPL 13.5%

## SOURCES

POTENTIALLY UNTAPPED TPL -- Employee Benefit Research Institute  
Tabulations of the March 1986  
Current Population Survey

KNOWN TPL -- State Agency Third Party Liability  
Inventory -- 1986



- + Pursuit of TPL requires up-front investment. State agencies often have difficulty convincing State decisionmakers to invest in a TPL program.
- + Managing and operating a TPL program is not easy.
  - States must operate both cost avoidance and recovery operations.
  - The welfare worker at eligibility determination plays a big part in uncovering the existence of TPL.
  - Each health plan has its own rules which complicates the pursuit of TPL and cost avoidance.
  - Federal requirements must be adhered to.
  - Some providers balk at cost avoidance requirements.
    - It can be administratively burdensome for providers to bill third parties, although often they can achieve a higher reimbursement rate from private insurers than from Medicaid.
    - Providers want a quick turnaround time for payment of services, so in some States, it benefits them to bill Medicaid first.
    - Participating providers are prohibited from billing Medicaid recipients for other than State required cost sharing amounts and deductibles.
  - An effective TPL program requires a sophisticated automated systems capability.
- However, as discussed above, the payoff can be great.

## VI. WHAT IS THE FEDERAL GOVERNMENT DOING TO HELP?

- We require a lot in the TPL area, but also allow a great deal of State flexibility.
- Congress has enacted Federal legislation that enables States to:
  - + require TPL identification as a condition of eligibility, and
  - + recover from liable third parties on behalf of recipients (mandatory assignment of rights).
- We published: “A Guide to Successful State Agency Practices”—a compilation of State TPL practices proven to be cost effective.
- We provide a forum for the exchange of TPL information among State agency administrators.
  - + We conduct national and regional TPL conferences.
  - + We make TPL presentations to national health organizations and associations.
  - + We hold meetings with the State Medicaid Directors and State TPL Technical Advisory Group to discuss issues impacting TPL.
- We facilitate data matches with other Federal agencies to identify third party resources; e.g., with CHAMPUS (The Civilian Health and Medical Program of the Uniformed Services).
- We foster intra-departmental coordination:
  - + Child support agencies are required to collect TPL information from those applying for child support services.
  - + The Social Security Administration collects TPL data from Supplemental Security Income applicants and recipients.

- We talk with the insurance industry about meeting its legal obligations as payer before Medicaid.
- We assist States in pursuing certain recovery cases where there is a need for national intervention.

## **VII. WHAT MAKES TPL WORK?**

- Conduct front-end identification.
  - + The key to saving Medicaid dollars through TPL lies in identifying other insurance available to recipients.
  - + The most cost effective manner to collect TPL information is during the initial eligibility interview process.
  - + Identification of TPL at this time:
    - is more efficient because it becomes an integral part of the interview process and may eliminate the need for additional interviews,
    - enables the State to provide TPL information on the Medicaid identification card which facilitates cost avoidance, and
    - enables the State to cost avoid claims from the beginning.
  - + Caseworkers need to be trained and encouraged to identify TPL and must understand the importance of pursuing TPL leads.
- Conduct data matches.
  - + Automated data matches provide an expeditious method for identifying TPL missed during the intake process or which becomes available after eligibility has been established.

- + States are required to conduct data matches with State wage information collection agencies, the Social Security Administration wage and earnings files, with State title IV-A agencies (Aid to Families with Dependent Children (AFDC)), and with other State agencies.
- + Data matches with other State agencies may include: workers' compensation, industrial accident commission files, and the State motor vehicle accident report files.
- Utilize cost avoidance whenever possible.
  - + An effective cost avoidance system reduces administrative costs associated with seeking reimbursement from a third party.
  - + It improves the State's cash flow; i.e., it is always better to avoid paying money out than to pay out and attempt to recoup.
  - + Cost avoidance often enables a State to avoid 100 percent of the cost of the services rendered. Postpayment recovery usually results in only a percentage of the reimbursement being recouped; e.g., 80 percent.
  - + By using the cost avoidance method of payment, staff is available to perform other necessary TPL recovery activities; e.g., casualty and liability identification and recovery.
- Improve systems capabilities.
  - + State-of-the-art hardware and software enable the State to identify insurance types and associated covered and noncovered services.
  - + Systems enhancements:
    - facilitate cost avoidance,

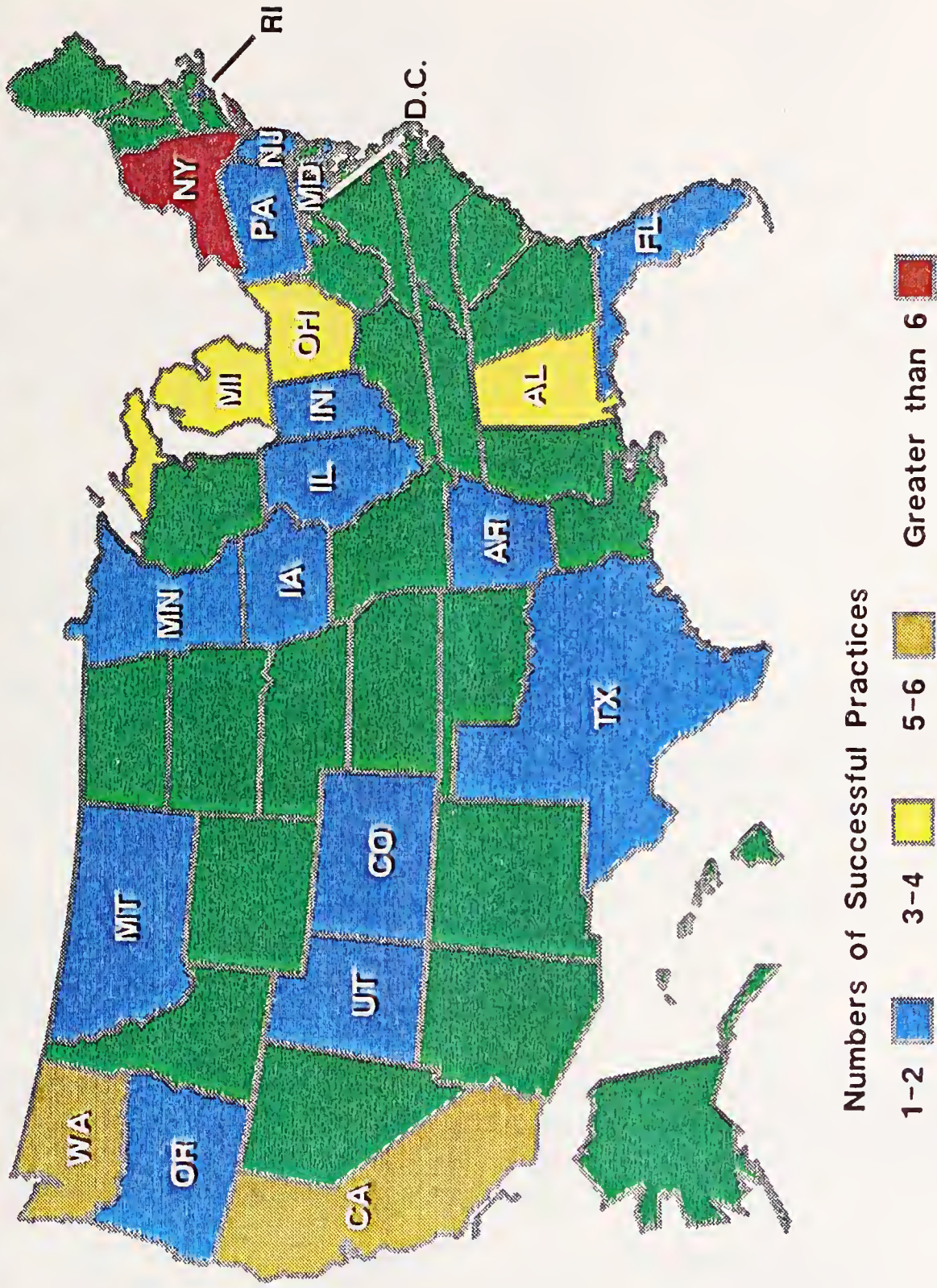
- allow the State to distinguish deductibles and coinsurance applicable to services,
- allow the State to establish prepayment edits in order to distinguish the appropriate payment method; e.g., cost avoidance or postpayment recovery,
- create a more reliable and expeditious method for collections and adjustments associated with postpayment activities,
- facilitate timely and accurate updates to the Medicaid eligibility file resulting from data matches with insurance companies and other State and local agencies, and
- facilitate electronic claims processing.
- Ensure automated integration of TPL data from data matches and other sources.
- Perform effective follow-up techniques.
  - + Techniques may include:
    - contacts with past and present recipient employers and unions for verification of third party resources;
    - review of trauma codes to detect potential casualty and liability claims and follow up with the recipient to determine if another party is at fault;
    - review of local newspapers and records of settled court cases involving casualty and liability claims; and
    - recontact of third party insurers if responses are not received within at least 90 days of billing.
- Determine and utilize cost effective thresholds on recovery actions.
  - + Low thresholds may result in pursuing claims which cost more to process than will be recouped. Conversely, if thresholds are too high, you lose money.
  - + Most States utilize thresholds under \$50 for health insurance and \$100 for casualty claims.
  - + Claims that fall under the threshold can be accumulated; when the total meets the threshold, they can be sent to the third party for recovery.
- Adopt proven TPL practices (administrative practices and model legislation).
  - + Use the State Agency Successful Practices Guide, an excellent compilation of State initiated TPL practices that have proven to be most cost effective.
  - + Examine your State's standing on legislation and successful practices per the two charts following this page.

#### **Benefit/Cost Analysis of Selected State Agency Successful Practices**

- Certain State agency third party identification and recovery practices have proven to be very cost effective in yielding savings to States. Ongoing savings generated from these practices far exceed the associated implementation and/or ongoing operational costs.
- Selected practices submitted by States for fiscal year 1987 include:



# STATE AGENCY SUCCESSFUL PRACTICES



Source: Third Party Liability Guide to Successful State Agency Practices - 1987



- A. Probate Recoveries From Estates of Deceased Recipients (First Party Liability)**—States track the value of recipient real property, and upon the death of the recipient, attempt to obtain repayment from the estate for the cost of services given to the recipient prior to his or her death.

STATE	ANNUAL SAVINGS	COSTS <sup>1/</sup>	BENEFIT/COST RATIO
CALIFORNIA	\$4,000,000	\$338,000	12:1
MARYLAND	\$1,200,000	\$104,402	11:1
MONTANA	\$ 250,000	\$ 1,000	250:1
NEW JERSEY	\$2,600,000	Unknown <sup>2/</sup>	Unknown
OREGON	\$2,200,000 <sup>3/</sup>	\$213,000	10:1

- B. Release of Information by Providers**—Some States require providers to contact the State agency before responding to requests for medical information from insurance companies, attorneys, and other third parties. States use this practice as a “safety net” to catch liability situations that other TPL identification procedures miss.

STATE	ANNUAL SAVINGS	COSTS <sup>1/</sup>	BENEFIT/COST RATIO
ALABAMA	\$ 300,000	Minimal	Unknown
OHIO	\$1,300,000	\$129,000	10:1
PENNSYLVANIA	\$2,500,000	Unknown <sup>2/</sup>	Unknown

- C. Use of Computer Generated Payment Histories in Lieu of Invoices for Billing Insurance Companies**—Negotiations with the Health Insurance Association of America and member commercial insurance companies and certain Blue Cross/Blue Shield plans resulted in their acceptance of State computer generated claims histories as billing documents.

STATE	ANNUAL SAVINGS	COSTS <sup>1/</sup>	BENEFIT/COST RATIO
ALABAMA	\$ 160,000	\$12,000	13:1
CALIFORNIA	\$10,000,000	\$594,500	17:1
WASHINGTON	\$ 1,750,000 <sup>4/</sup>	\$ 40,000	44:1

- D. Data Matches With Other State Agencies to Identify Health Insurance Coverage**—Several States extend health and major medical coverage benefits to retirees. Where State agencies that monitor these programs have a usable data base, Medicaid agencies can match against it to locate Medicaid recipients who are covered by another State program.

STATE	ANNUAL SAVINGS	COSTS <sup>1/</sup>	BENEFIT/COST RATIO
OHIO	\$900,000	\$31,000	29:1
WASHINGTON	\$220,000	\$ 1,200	183:1

<sup>1/</sup> Ongoing operational, annualized costs; excludes one time implementation costs.

<sup>2/</sup> State does not isolate the cost of this practice.

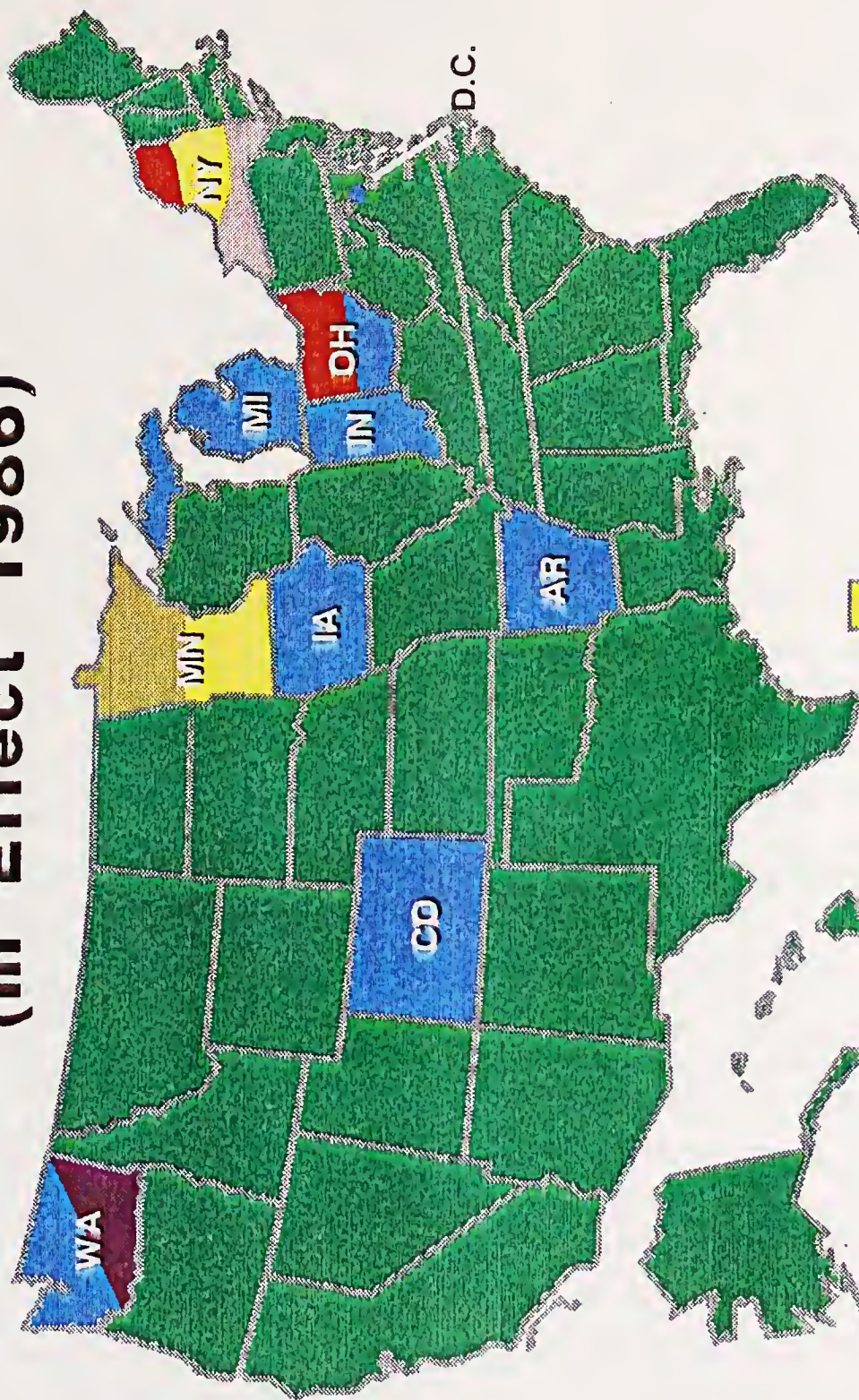
<sup>3/</sup> Probate activities will increase to \$4.3 million annually beginning July 1989.

<sup>4/</sup> Savings are from June 1986 to May 1987.



# STATE MODEL LEGISLATION

## (In Effect 1986)



- |   |   |   |   |
|---|---|---|---|
|  | Subrogation Rights of Medicaid Agencies         |  | Payment of Health Insurance Premiums by the State               |
|  | Co-endorsement of Insurance Checks by Providers |  | Requirement For Adjudicated Parents to Provide Health Insurance |
|  | Co-operation by Third Party Insurers            |  | Model Support Enforcement Through Withholding Requirements      |



## Model State Legislation

- Enactment of State legislation is a key element in a State's pursuit of TPL. Although it is not always possible to evaluate program savings that are directly attributable to legislative enactment, legislation is often the catalyst that gives States the necessary leverage to improve their TPL programs.
- Here are several "successful" legislative abstracts:

**A. Subrogation Rights of Medicaid Agencies**—Statutory authority to place State demands ahead of (or as part of) any other claim for payment, against any insurer of a recipient, any tortfeasor or insurer of a tortfeasor, up to the extent of the value of medical services provided to the recipient.

**B. Co-endorsement of Insurance Checks by Providers**—Requires that all checks from health insurance companies regulated under State law be made payable to and endorsed by both the insured and the provider of service. Some insurance companies restrict payment of an insurance claim to the insured or the policy holder.

**C. Cooperation by Third Party Insurers**—Requires third parties to cooperate with the State Medicaid agencies' efforts to identify insurance coverage available to Medicaid recipients. The State maintains responsibility for confidentiality of recipient information.

**D. Payment of Health Insurance Premiums by the State**—Legislation enables the State to continue paying health insurance premiums (when it is cost effective) for Medicaid recipients who have health insurance in force covering care and medical benefits that are also covered under the Medicaid program.

## VIII. CHARACTERISTICS OF A SUCCESSFUL TPL PROGRAM

- Each State's TPL program is unique in its configuration and administration

- A survey of States' TPL programs reveals that highly successful TPL programs possess the following (not all inclusive) traits:
  - + TPL savings to program expenditure and to administrative expenditure ratios are above the medians,
  - + health insurance and liability thresholds between \$0 and \$100,
  - + use of Medicaid identification cards with TPL identifiers,
  - + use of trauma code screens with detailed follow-up techniques,
  - + performance of six or more data matches, and,
  - + State legislation which authorizes the State Medicaid agency to recoup Medicaid expenditures through: subrogation, liens, probate, and prohibition of exclusionary clauses in insurance policies involving Medicaid recipients.

## IX. WHAT CAN YOU DO TO IMPROVE PROGRAM PERFORMANCE?

- Demonstrate commitment.
- Devote sufficient resources.
- Ensure that the eligibility determination process is contributing its share of TPL identification.
- Request TPL savings reports.
- Provide visibility; make TPL an agenda topic for budget meetings, legislative hearings and discussions on health care issues.
- Develop a strong legislative base.
  - + Determine what impact other State laws have on the TPL program.
  - + Introduce needed legislation.
- Contact your respective HCFA regional office for additional information regarding TPL. For your reference, a list of HCFA regional TPL coordinators is provided on the next page.

## HEALTH CARE FINANCING ADMINISTRATION

### Regional Medicaid Third Party Liability Coordinators

Region	Contact	Address	Telephone No.
Boston (I)	Alan Bryan	Division of Program Operations Room 1309 JFK Federal Building Boston, Massachusetts 02203	(617) 565-1246
New York (II)	Jaysen Eisengrein	Division of Program Operations Room 3811 26 Federal Plaza New York, New York 10278	(212) 264-2590
Philadelphia (III)	Ken Albrecht	Division of Medicaid 3535 Market Street P.O. Box 7760 Philadelphia, Pennsylvania 19101	(215) 596-0601
Atlanta (IV)	Lonetta Essary	Division of Program Operations Suite 701 101 Marietta Tower Atlanta, Georgia 30323	(404) 331-0111
Chicago (V)	Ed Zawislak	Division of Program Operations Suite A-835 175 West Jackson Boulevard Chicago, Illinois 60604	(312) 353-9860
Dallas (VI)	James Ogé	Division of Program Operations Room 2000 1200 Main Tower Building Dallas, Texas 75202	(214) 767-6441
Kansas City (VII)	Judith Flynn	Division of Program Operations New Federal Office Building Room 235 601 East 12th Street Kansas City, Missouri 64106	(816) 436-3407
Denver (VIII)	Dave Selleck	Division of Medicaid Federal Building Room 574 1961 Stout Street Denver, Colorado 80294	(303) 844-6216
San Francisco (IX)	Bob Kovash Langford Williams	Division of Program Operations 14th Floor 100 Van Ness Avenue San Francisco, California 94102	(415) 556-2191
Seattle (X)	Denny Sexton Lavinia Peters	Division of Financial Operations Mail Stop 502 2901 Third Avenue Seattle, Washington 98121	(206) 442-8140 (206) 442-8154





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